



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2010

Mr. Charles Brancaccio
Assistant County Attorney
Johnson County
204 South Buffalo Avenue, Suite 410
Cleburne, Texas 76033-5404

OR2010-13816

Dear Mr. Brancaccio:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 398217.

The Johnson County Sheriff's Office (the "sheriff") received a request for information related to report number 10-19777, including audio and video recordings, and for the sheriff's pursuit policy regarding motorcycles. You state that some responsive information has been released. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes the requestor's fingerprint. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a]

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). In this instance, the requestor has a right of access to his own fingerprint. *See id.* § 560.002(1); *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles). Accordingly, we find that the sheriff may not withhold the fingerprint we have marked, but must release it to the requestor pursuant to section 560.002(1)(A). *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Next, you claim the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal case. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to the information at issue. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, we note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Therefore, with the exception of basic information, which you state has already been released, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the sheriff must release the marked fingerprint to the requestor pursuant to section 560.002 of the Government Code. With the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 398217

Enc. Submitted documents

c: Requestor
(w/o enclosures)